

Remarks

The present response is being submitted in reply to the Office action issued on August 23, 2007. Claims 1-30 are pending in this application. The Applicants wish to thank the Examiner for the determination that claims 6-8, 10-17, 19-21 and 25-29 would be allowable if rewritten in independent form including all of the limitations of the base claims and any intervening claims. By the present response, claims 1-30 have been canceled and new claims 31-52 have been added. For the Examiner's ease of reference, the new claims correspond to original claims 1-30 as follows:

Claim 31 – based on claims 1, 2, 3, 5 and 6

Claim 32 – based on claim 23

Claim 33 – based on claim 24

Claim 34 – based on claim 25

Claim 35 – based on claim 26

Claim 36 – based on claim 7

Claim 37 – based on claim 27

Claim 38 – based on claim 8

Claim 39 – based on claim 28

Claim 40 – based on claims 9 and 10

Claim 41 – based on claim 11

Claim 42 – based on claim 12

Claim 43 – based on claim 13

Claim 44 – based on claim 14

Claim 45 – based on claim 15

Claim 46 – based on claim 29

Claim 47 – based on claim 16

Claim 48 – based on claim 17

Claim 49 – based on claim 18 (but revised in dependent form)

Claim 50 – based on claim 19

Claim 51 – based on claim 20

Claim 52 – based on claim 21

No new matter has been added. Reconsideration is respectfully requested in light of the amendments being made hereby and of the following remarks.

Rejection of claims 22 and 30 under 35 U.S.C. 101

Claims 22 and 30 have been rejected under 35 U.S.C. 101 because the claimed recitation of a use, without setting forth any steps involved in the process, results in an improper definition of a process, i.e., results in a claim which is not a proper process claim. The Applicants submit that claims 22 and 30 have both been canceled and are no longer pending in the instant application. Therefore, withdrawal of this rejection is respectfully requested.

Rejection of claims 1, 9, 18, 22 and 30 under 35 U.S.C. 112, second paragraph

Claims 1, 9, 18, 22 and 30 have been rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the

subject matter which the Applicants regard as the invention. Specifically, the Examiner has raised the following issues.

Claim 1 (new claim 31) – The Examiner states that the claim language “2-pyrrolidone is used *in excess* relative to said compound (II)” (emphasis provided) is ambiguous claim language. This language has been clarified in claim 31.

Claim 9 (new claim 40) – The Examiner questioned whether this claim was intended to be independent or dependent. Claim 40 has been clarified and is presented in independent form.

Claim 18 (new claim 49) – The Examiner states that the claim is unclear since compound (II) is both the starting material and the ending material and since it is unclear whether the “free base” is the end product. The Examiner also states that the figure of compound (III) should be included. In current claim 49, the term “free base” has been deleted and the figure of compound (III) has been included with claim 40, from which claim 49 depends.

Claims 22 and 30 have been deleted and the subject matter of these claims is no longer in the present application.

In view of the present claim amendments and the above explanations, withdrawal of these rejections is respectfully requested.

Rejection of claims 1-5 and 23-24 under 35 U.S.C. 103(a)

Claims 1-5 and 23-24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Yadav, et al. (*Microwave-assisted Rapid Synthesis of the Cytotoxic Alkaloid Luotonin A*), Tetrahedron Letters, Vol. 43, 1905-07 (2002). The Examiner argues that

Yadav, et al. teach the limitations of the present invention but do not teach a motivation for a skilled pharmaceutical chemist to modify the molar ratios of the two reactants relative to one another. Therefore, the Examiner concludes that the present invention as set forth in claims 1-5 and 23-24 would be obvious because a person of ordinary skill has good reason to pursue the known options within his or her technical grasp. The Examiner also states that the same rejection could have been issued over Späth, et al.

It is respectfully submitted that independent claim 1 has been amended (and now presented as new independent claim 31) to include the subject matter of dependent claims 2, 3 and 5, as well as the subject matter of claim 6 which the Examiner has been deemed to be allowable subject (Office action, page 6). In other words, the Applicants submit that neither Yadav, et al. nor Späth, et al. teach the claimed process comprising the limitations as set forth in present claims 31-52. Withdrawal of this rejection is respectfully requested.

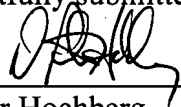
Conclusion

In light of the foregoing claims and arguments, it is believed that the present application is in condition for allowance, and such action is earnestly solicited. The Examiner is invited to call the undersigned if there are any remaining issues to be discussed which could expedite the prosecution of the present application.

Date: November 23, 2007

D. Peter Hochberg Co., L.P.A.
1940 E. 6th St. - 6th Floor
Cleveland, OH 44114
Phone - (216) 771-3800
Fax - (216) 771-3804

Respectfully submitted,

By: 
D. Peter Hochberg
Reg. No. 24,603